

Special Civil Application No 847 of 95

Date of decision: 08/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

be circulated to the Civil Judge?

SURYAKUMAR S THAKER

vs

DIST DEVELOPMENT OFFICER MEHSANA

Appearance:

Shri Rashmi Jani, for Petitioners

Shri D.A.Bambhania, AGP for the Respondent no.1.

Shri Kamal Mehta, for Respondent No. 2

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Leave to add State of Gujarat as parties.

Rule. Mr. Bambhania appears and waives service of rule on behalf of the respondent no.2. Mr. Kamal Mehta waives service of rule on behalf of respondent no.1.

In this petition an order against the suspension order challenged by filing this petition. Earlier also the said order was challenged by filing a petition and at that time this court (Coram: M.R. Calla J.) passed the following order on October 6, 1994.

"Heard the learned counsel for the petitioner. This Special Civil Application is directed against the order of suspension dated 19.9.1994. It is not in dispute that the suspension order is appealable. Learned counsel for the petitioner submits that the petitioner is now desirous of filing appeal. Should the petitioner file any such appeal within a period of 10 days from today the appellate authority should hear and decide the appeal within a period of six weeks from the date certified. Copy of this order is produced before the concerned appellate authority. This Special Civil Application is dismissed with the observations as aforesaid."

It appears that in pursuance of this order appeal was filed before respondent no.1 under Rule 13 of the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964 (hereinafter referred to as "the Rules". Respondent no.1, however, vide his communication dt. December 1, 1994 returned the memorandum of appeal to the petitioner stating therein that as the suspension was not treated as penalty, no appeal would lie and hence the appeal was not maintainable.

Now, looking to the relevant provisions of the rules, it is clear that the suspension by way of penalty cannot be imposed. Penalties have been referred to in Rule 5 of the Rules. The said Rule 5 reads as under:

5. Penalties.- The following penalties may, for good and sufficient reasons, and as hereinafter provided be imposed on a member of the Panchayat Service, namely:-

- (1) Censure, (4) Withholding of increments or promotions, (5) Recovery from pay of the whole or part of any pecuniary loss caused to the panchayat by negligence or breach of orders, (6) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale, (7) Compulsory retirement, (8) Removal from service not disqualifying for future employment, (9) Dismissal from service which shall ordinarily be a disqualification for future employment. :

Provided that, in the case of members who have been allocated to the panchayat service under section 206 of the Act and who, according to the terms and conditions of their service which were immediately applicable to them before such allocation were not liable to the penalty of fine, no penalty of fine shall be inflicted upon them...."

Thus, suspension is neither a major penalty nor a minor penalty. Hence, there is no question of filing appeal against the suspension by way of penalty. As observed in the impugned order rule making authority has conferred power on the authority by which a party aggrieved against the order of suspension can file an appeal under Rule 13 of the Rules. Rule 13 of the Rules, reads as under:

"13. Appeals against order of suspension or orders imposing penalties.- (i) A member of the panchayat service may appeal against an order of suspension or an order imposing any penalty on him to the authority, specified as appellate authority in the Appendix appended to these rules within a period of 90 (ninety) days from the date on which he receives the order:

Provided that the appellate authority may entertain an appeal after expiry of the said period, if it is satisfied that the appellant has had sufficient cause for not submitting the appeal in time.

(ii) Every person submitting an appeal shall do so separately and in his own name.

(iii) The appeal shall be addressed to the authority competent to hear appeals and shall contain a material statements and arguments on which the appellant relies and shall not contain any disrespectful or improper language. A copy of the order appealed against shall invariably be enclosed with the Appeal.

(iv) Every appeal shall be submitted through the officer to whom the appellant is subordinate at the time of submitting the appeal. Such officer shall, in turn forward it to the authority which made the order.

Provided that an advance copy of the appeal may be submitted direct to the appellate authority."

Obviously, therefore, the appeal which can be filed against the order of suspension would be only against penal action since the suspension is not one of the mode of the punishment as provided under the relevant rules and yet a right of appeal is conferred on an aggrieved party against the order of suspension, obviously such appeal would lie when the penal action of suspension is taken

against the Employer. Hence, respondent no.2 has committed an error of law apparent on the face of record in coming to the conclusion that the appeal is not maintainable. The said order is, therefore, quashed and set aside directing the respondent no.1 to entertain the appeal and to decide the same in accordance with law. I may clarify that I am not expressing any opinion on merits of the matter. It is for the respondent no.1 to consider the merits of the matter and to pass appropriate order thereon. Rule is accordingly made absolute to the above extent. Since the action of suspension and the petitioner has to come twice to this court the respondent authority is directed to dispose of the appeal as expeditiously as possible preferably within four weeks from the receipt of the writ of this court. No order as to costs.
